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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

5 CFR Part 7501

**[Docket No. FR-5542-F-02]
RIN 2501-AD55**

**Supplemental Standards of Ethical Conduct for Employees of the
Department of Housing and Urban Development**

AGENCY: Office of the Secretary, Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: The Department of Housing and Urban Development (HUD), with the concurrence of the Office of Government Ethics (OGE), is finalizing the proposed rule to amend its existing Supplemental Standards of Ethical Conduct, which are regulations for HUD officers and employees that supplement OGE's Standards of Ethical Conduct for Employees of the Executive Branch (Standards). To ensure a comprehensive and effective ethics program at HUD, and to address ethical issues unique to HUD, this final rule reflects statutory changes that were enacted subsequent to the codification of HUD's Supplemental Standards of Conduct regulation in 1996. Significantly, this final rule reflects the transfer of general regulatory authority over the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation from HUD to the Federal Housing Finance Agency (FHFA). This final rule also revises definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarifies existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. Finally, this final rule more clearly describes the role and

responsibility of the HUD Office of Inspector General in the agency's ethics program. This rule follows publication of a March 14, 2012, proposed rule and considers public comment on the proposed rule, but makes no changes at this final rule stage.

DATES: Effective Date: **[Insert Date 30 days after date of publication in the FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Robert H. Golden, Assistant General Counsel, Ethics Law Division, telephone number 202-402-6334, or Peter J. Constantine, Associate General Counsel for Ethics and Personnel Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number 202-402-2377. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION

I. Background

On March 14, 2012 (77 FR 14977, republished on March 22, 2012, at 77 FR 16761), HUD, with OGE's concurrence, published for comment a proposed rule to amend its Supplemental Standards of Ethical Conduct for Employees of the Department of Housing and Urban Development (Supplemental Standards of Conduct), codified at 5 CFR part 7501. The HUD Supplemental Standards of Conduct supplement OGE's government-wide Standards of Ethical Conduct for Employees of the Executive Branch (Standards), codified at 5 CFR part 2635, and addresses ethical issues unique to HUD officers and employee. HUD published its March 14, 2012, proposed rule to strengthen the integrity of the Department in the operation and administration of its program by ensuring that its ethics program reflected significant statutory

changes to HUD's programs and operations enacted subsequent to the codification of its current Supplemental Standards of Conduct in 1996.

In this regard, one significant statutory change to HUD programs and operations was made by the Housing and Economic Recovery Act of 2008 (HERA) (Pub. L. 110-289, approved July 30, 2008). HERA transferred regulatory authority over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively referred to as the Government Sponsored Enterprises, or GSEs) from HUD to the Federal Housing Finance Agency (FHFA). Based on this transfer of regulatory authority, HUD proposed removing provisions of its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD proposed removing § 7501.106 entitled, "Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises," which prohibits employees whose duties involve the regulation or oversight of the GSEs from, among other things, owning financial interests in certain mortgage institutions and from performing any work, either compensated or uncompensated, for or on behalf of a mortgage institution. The removal of these sections was based on HUD's determination that they were no longer necessary to ensuring the impartiality and integrity in the administration of HUD's programs.

In addition, the proposed rule revised definitions used in HUD's Supplemental Standards of Conduct to reflect updated titles and positions and clarify existing prohibitions on certain financial interests and outside employment to better guide employee conduct, while upholding the integrity of HUD in the administration of its programs. The rule also proposed to add a new § 7501.106 to clarify the authority of the HUD Office of Inspector General (OIG) in the agency's ethics program and establishes it as a separate component as provided by 5 CFR 2635.203(a).

II. Public Comment on the Proposed Rule

By the close of the public comment period on May 14, 2012, HUD received one public comment on the proposed rule. The commenter, a member of the public, expressed a concern regarding the removal of § 7501.106, the provision that prohibits covered HUD employees from owning financial interests in or engaging in outside employment or certain other dealings with mortgage companies doing business with HUD. The commenter stated that such employees are in positions to possess insider information concerning the dealings of these companies and that the removal of the ethics provision against dealings and ownership creates a circumstance where personal interests can easily cloud regulatory judgment. The commenter also stated that the removal of § 7501.106 opens the risk that these HUD employees could be charged with insider trading, creating a preventable public relations situation that would drain already strained budgets.

HUD appreciates the commenter's insightful consideration of its proposed rule. HUD has considered the comment but has decided, however, not to accept the comment or change the proposal to remove § 7501.106. As discussed in the proposed rule preceding the codification of § 7501.106 (60 FR 34420, July 30, 1995), the need for the provision resulted from the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501, et seq.) (FHEFSSA), which significantly expanded HUD's authority to regulate Fannie Mae and Freddie Mac. Specifically, FHEFSSA provided broad regulatory authority to a newly established Office of Federal Housing Enterprise Oversight within HUD to ensure the financial safety and soundness of the GSEs. Based on this authority, § 7501.106 was designed to protect against potential conflicts of interest and the appearance of conflicts of interest for HUD employees whose official duties involved the oversight or regulation of the GSEs, by prohibiting these

employees from acquiring or obtaining the financial interests of certain mortgage institutions that conducted business with, or relied upon the GSEs. As stated in HUD's March 14, 2012, proposed rule, Title I of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, approved July 30, 2008) amended FHEFSSA to transfer regulatory authority over the GSEs from HUD to FHFA. As a result, HUD believes that the continued need for § 7501.106, as well as the general prohibition on directly receiving, acquiring, or owning securities issued by the GSEs, no longer exists.

While the purpose of § 7501.106 related to HUD's regulatory authority over the GSEs, other ethical requirements protect against the commenter's broader point regarding insider trading and insider information as it relates to mortgage companies with which a HUD employee may work. These requirements include 18 U.S.C. 208, a federal criminal statute, which prohibits employees from participating personally and substantially in any particular matters that will have a direct and predictable effect on the employee's financial interests, and 5 CFR 2635.502, which provides that an employee should not participate in a particular matter when the employee or the agency designee determines that the circumstances may cause a reasonable person with knowledge of the relevant facts to question his or her impartiality in the matter. Additionally, the Supplemental Standards of Conduct at § 7501.105 specifically prohibit HUD employees from outside employment with businesses related to real estate, which includes mortgage companies. Finally, the Stop Trading on Congressional Knowledge Act of 2012 (STOCK Act) (Pub. L. 112-105) also prohibits certain executive branch employees in senior positions from purchasing securities that are the subject of an initial public offering in any manner other than is available to members of the public generally. HUD believes that these provisions are sufficient to ensure the integrity of HUD in the operation and administration of its programs.

III. Final Rule

At this final rule stage, HUD adopts the March 14, 2012, proposed rule without change. Significantly, HUD is removing provisions from its Supplemental Standards of Conduct that prohibit all HUD employees from owning certain financial interests issued by the GSEs. In addition, HUD is removing § 7501.106 entitled, “Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises.” HUD’s action is based on its determination that these provisions are no longer necessary to ensure public confidence in the impartiality and objectivity with which HUD programs are administered.

IV. Analysis of the Regulation

The following is a section-by-section overview of the significant amendments made by this final rule. Members of the public are invited to review the preamble to HUD’s March 14, 2012, proposed rule for a fuller discussion of the revisions made by this final rule.

Section 7501.102 Definitions.

Section 7501.102 updates and clarifies key terms used in the Supplemental Standard of Conduct. Specifically, the definitions of “Agency designee” and “Designated Agency Ethics Official (DAEO)” are revised to reflect updated office names and titles within the current HUD organization. Additionally, the reference to the Inspector General (IG) is removed from the definition of “agency designee” in favor of adding definitions for “Bureau,” “Bureau Ethics Counselor,” and “Deputy Bureau Ethics Counselor.” “Bureau” is defined to mean the Office of the Inspector General (OIG). “Bureau Ethics Counselor” and “Deputy Bureau Ethics Counselor” are defined to mean, respectively, the General Counsel for OIG and the OIG employees to whom the OIG General Counsel delegates responsibility to make determinations, issue explanatory

guidance, or establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for Bureau employees. The definition of “employment” is also revised to provide that employment includes uncompensated activity, such as volunteer work for others while off-duty.

Section 7501.103 Waivers.

Section § 7501.103 is revised to codify HUD practice that a waiver request must be in writing, and to guide employees on what should be included in a waiver request. It also confirms HUD practice that hardship and other exigent circumstances are legitimate reasons for a waiver request, and such a request will be considered in light of HUD’s need to ensure public confidence in the impartiality and objectivity with which HUD programs are administered. This section also delegates authority to the Bureau Ethics Counselor to waive provisions of this part.

Section 7501.104 Prohibited financial interests.

This final rule removes from § 7501.104(a) the reference to covered employees. This reflects HUD’s decision to remove § 7501.106, which provided rules for employees involved in the regulation or oversight of GSEs. Section 7501.104(a) is also revised by removing provisions prohibiting HUD employees from receiving, acquiring, or owning securities issued by Fannie Mae or Freddie Mac and securities collateralized by Fannie Mae or Freddie Mac. HUD has determined that these prohibitions are no longer necessary based on the transfer of regulatory authority from HUD under HERA.

This final rule revises § 7501.104(a)(2), the provision prohibiting employees, their spouses, and minor children from holding stock or another financial interest “in a multifamily project or single family dwelling, cooperative unit, or condominium unit” that is owned or subsidized by the Department, by removing that term and replacing it with the term “project.”

The final rule also removes the term “stock or other financial interest,” substitutes the term “financial interest,” and references OGE’s regulations at 5 CFR 2635.403(c) for a complete definition of the term “financial interest,” including examples. These changes provide clarity to the prohibition and will continue to prohibit HUD employees from holding ownership interests in all HUD-subsidized or -insured projects that exist or may come to exist in the future.

Section 7501.104(a)(3) continues to permit HUD employees to receive, on behalf of a tenant, a Section 8 subsidy under certain conditions. A new exception permits all new HUD employees who already have a tenant receiving Section 8 subsidies to retain that tenant until the tenant terminates his or her lease. In addition, § 7501.104(a)(3)(i)(E) adds a new exception that permits HUD employees to receive a Section 8 subsidy for the rental of properties located in areas of Presidentially declared emergency or natural disaster with prior written approval from an agency designee.

Section 7501.104(b) provides exceptions to § 7501.104(a). This final rule expands the exceptions by removing a prohibition on owning investment funds that concentrate in residential mortgages or mortgage-backed securities. HUD has determined that this prohibition is no longer needed in light of the fact that HUD no longer has regulatory authority over Fannie Mae and Freddie Mac.

This final rule continues to permit HUD employee to own homes financed with mortgages insured under programs of the Federal Housing Administration (FHA), and continues to permit the purchase by HUD employees of HUD-owned homes. The provisions permitting HUD employees to own or acquire these assets are established as exceptions to § 7501.104(a) at §§ 7501.104(b)(2) and (b)(3), respectively. In both sections, this final rule provides that

employees must adhere to the procedures established by the Assistant Secretary for Housing–FHA Commissioner in order to obtain FHA insurance or to purchase a HUD-held property.

Section 7501.104(b)(4) provides that the employment compensation and benefits package for an employee’s spouse is not a prohibited financial interest even if the employee’s spouse is employed by an entity that has interests in HUD projects prohibited under § 7501.104(a)(2).

Finally, § 7501.104(b)(5) continues to permit employees, or their spouses or minor children, to hold Government National Mortgage Association (GNMA) securities.

Section 7501.105 Outside activities.

Section 7501.105 governs the outside activities of HUD employees. HUD has determined that maintaining the policy against employment in businesses related to real estate or manufactured housing is necessary to protect against questions regarding the impartiality and objectivity of employees in the administration of HUD programs. Allowing such activity would hinder HUD in meeting its missions if members of the public question whether HUD employees are using their public positions or HUD connections to advance their outside real estate-related employment. To clarify the intent of this prohibition and support its consistent application, this final rule amends § 7501.105(a)(1) by removing the phrase “involving active participation” with a real estate-related business. Additionally, this final rule separates the prohibition against the ownership activities of operating and managing a real estate-related business involving investment properties from the employment prohibition by adding § 7501.105(a)(2), which prohibits the operation or management of investment properties to the extent that doing so rises to the level of a real estate business. To make the prohibition more transparent, HUD is also codifying longstanding policy by listing several factors that it uses to consider whether the employee’s actions of operating or managing investment properties rise to the level of a real

estate business that falls within the prohibition. These changes do not change the application of the prohibition.

This final rule also removes the specific restriction on employees having outside positions with Fannie Mae and Freddie Mac. As previously discussed, HUD no longer has general regulatory authority over Fannie Mae and Freddie Mac. HUD employees, under § 7501.105(a)(1), continue to be prohibited from employment with a business related to real estate. This prohibition also covers employment with Fannie Mae and Freddie Mac.

This final rule adds § 7501.105(b)(2), which codifies HUD's longstanding policy that employees with a real estate agent's license may continue to hold such license. An employee may only use his or her license in relation to purchasing or selling a single-family property for use as the employee's primary residence, or for the primary residence of an immediate family of the employee. Employees seeking to use their real estate license for this purpose, however, must obtain the prior written approval of an agency ethics official. Section 7501.105(c) is revised to add the requirement for prior written approval from an agency ethics official for employees seeking to use their real estate license for this purpose.

Section 7501.105(c)(1) requires an employee to receive written approval prior to accepting a position of authority with a prohibited source. This section has been expanded to include all prohibited sources because HUD has determined that taking a position of authority with any prohibited source, not just those that receive HUD funding, creates the appearance of a conflict of interest and should therefore be examined by an agency ethics official. As discussed in this preamble, HUD has added the requirement at § 7501.105(c)(1)(iv) for prior written approval from an agency ethics official for employees seeking to use their real estate license in relation to purchasing or selling a single-family property for use as the employee's primary

residence or as the primary residence of an immediate family member of the employee.

Finally, this final rule adds § 7501.105(d) to incorporate HUD's policy regarding liaison representatives, which was previously provided as a Note. This change will avoid any confusion over the concept and its authority.

Section 7501.106 Bureau instructions and designation of separate agency components.

Former § 7501.106 entitled, "Additional rules for certain Department employees involved in the regulation or oversight of Government sponsored enterprises," is removed. As previously discussed in this preamble, HUD no longer has regulatory authority over Fannie Mae and Freddie Mac and has determined that removing this provision would not compromise the integrity of HUD's programs and operations.

In its place, HUD is adding a new § 7501.106 that clarifies the authority of the OIG in the agency's ethics program and establishes it as a separate component as provided for by 5 CFR 2635.203(a). Specifically, new § 7501.106(a) delegates to the Bureau Ethics Counselor the authority to designate Deputy Bureau Ethics Counselors to make determinations, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR 2634, and 5 CFR part 2635 for their bureau. In addition, new § 7501.106(b) designates the OIG as a separate agency component.

V. Matters of Regulatory Procedure

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. Because this rule relates solely to the internal operations of HUD, this rule was determined to be not a significant regulatory action under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on a substantial number of small entities because this rule pertains only to HUD employees.

Information Collection Requirements

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply to this regulation because it does not contain information collection requirements subject to the approval of OMB.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites, and therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and

either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. Since it is only directed toward HUD employees, this rule would not impose any federal mandates on any state, local, or tribal governments, or on the private sector, within the meaning of the UMRA

List of Subjects in 5 CFR Part 7501

Conflicts of interests.

Accordingly, for the reasons described in the preamble, HUD, with the concurrence of OGE, revises 5 CFR part 7501 to read as follows:

PART 7501 – SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.

7501.101 Purpose.

7501.102 Definitions.

7501.103 Waivers.

7501.104 Prohibited financial interests.

7501.105 Outside activities.

7501.106 Bureau instructions and designation of separate agency component.

Authority: 5 U.S.C. 301, 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 C.F.R., 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.203(a), 2635.403(a), 2635.803, 2635.807.

§ 7501.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Housing and Urban Development (HUD or Department) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. Employees are required to comply with 5 CFR part 2635, this part, and any additional rules of conduct that the Department is authorized to issue.

§ 7501.102 Definitions.

For purposes of this part, and otherwise as indicated, the following definitions shall apply:

Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

Agency designee, as used also in 5 CFR part 2635, means the Associate General Counsel for Ethics and Personnel Law, the Assistant General Counsel for the Ethics Law Division, and the HUD Regional Counsels.

Agency ethics official, as used also in 5 CFR part 2635, means the agency designees as specified above.

Bureau means the Office of the Inspector General.

Bureau Ethics Counselor means the General Counsel for the Bureau.

Deputy Bureau Ethics Counselor means the Bureau employee or employees who the Bureau Ethics Counselor has delegated responsibility to act under § 7501.106 for the Bureau.

Designated Agency Ethics Official (DAEO) means the General Counsel of HUD or the Deputy General Counsel for Operations in the absence of the General Counsel.

Employment means any compensated or uncompensated (including volunteer work for others while off-duty) form of non-federal activity or business relationship, including self-employment, that involves the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

§ 7501.103 Waivers.

The Designated Agency Ethics Official, or the Bureau Ethics Counselor for a Bureau employee may waive any provision of this part upon finding that the waiver will not result in conduct inconsistent with 5 CFR part 2635 and is not otherwise prohibited by law and that application of the provision is not necessary to ensure public confidence in the Department's impartial and objective administration of its programs. Each waiver shall be in writing and supported by a statement of the facts and findings upon which it is based and may impose appropriate conditions, such as requiring the employee's execution of a written disqualification statement. A waiver will be considered only in response to a written waiver request submitted to an agency ethics official. The waiver request should include:

(a) The requesting employee's Branch, Unit, and a detailed description of his or her official duties;

- (b) The nature and extent of the proposed waiver;
- (c) A detailed statement of the facts supporting the request; and
- (d) The basis for the request, such as undue hardship or other exigent circumstances.

§ 7501.104 Prohibited financial interests.

(a) General requirement. This section applies to all HUD employees except special Government employees. Except as provided in paragraph (b) of this section, the employee, or the employee's spouse or minor child, shall not directly or indirectly receive, acquire, or own:

- (1) Federal Housing Administration (FHA) debentures or certificates of claim;
- (2) A financial interest in a project, including any single family dwelling or unit, which is subsidized by the Department, or which is subject to a note or mortgage or other security interest insured by the Department. The definition of "financial interest" is found at 5 CFR 2635.403(c);

(3)(i) Any Department subsidy provided pursuant to Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437f), to or on behalf of a tenant of property owned by the employee or the employee's spouse or minor child. However, such subsidy is permitted when:

(A) The employee, or the employee's spouse or minor child acquires, without specific intent as through inheritance, a property in which a tenant receiving such a subsidy already resides;

(B) The tenant receiving such a subsidy lived in the rental property before the employee worked for the Department;

(C) The tenant receiving such a subsidy is a parent, child, grandchild, or sibling of the employee;

(D) The employee's, or the employee's spouse or minor child's, rental property has an incumbent tenant who has not previously received such a subsidy and becomes the beneficiary thereof; or

(E) The location of the rental property is in a Presidentially declared emergency or natural disaster area and the employee receives prior written approval from an agency designee.

(ii) The exception provided by paragraph (a)(3)(i) of this section continues only as long as:

(A) The tenant continues to reside in the property; and

(B) There is no increase in that tenant's rent upon the commencement of subsidy payments other than normal annual adjustments under the Section 8 program.

(b) Exception to prohibition for certain interests. Nothing in this section prohibits the employee, or the employee's spouse or minor child from directly or indirectly receiving, acquiring, or owning:

(1) A financial interest in a publicly available or publicly traded investment fund that includes financial interests prohibited by paragraph (a)(2) of this section, so long as the employee neither exercises control nor has the ability to exercise control over the fund or the financial interests held in the fund;

(2) Mortgage insurance provided pursuant to section 203 of the National Housing Act (12 U.S.C. 1709) on the employee's principal residence and any one other single family residence. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to obtain FHA insurance;

(3) Department-owned single family property. Employees must adhere to the procedures established by the Assistant Secretary for Housing—FHA Commissioner in order to purchase a HUD-held property;

(4) Employment compensation and benefit packages provided by the employer of an employee's spouse that include financial interests prohibited by paragraph (a)(2) of this section; or

(5) Government National Mortgage Association (GNMA) securities.

(c) Reporting and divestiture. An employee must report, in writing, to the appropriate agency ethics official, any interest prohibited under paragraph (a) of this section acquired prior to the commencement of employment with the Department or without specific intent, as through gift, inheritance, or marriage, within 30 days from the date of the start of employment or acquisition of such interest. Such interest must be divested within 90 days from the date reported unless waived by the Designated Agency Ethics Official in accordance with § 7501.103.

§ 7501.105 Outside activities.

(a) Prohibited outside activities. Subject to the exceptions set forth in paragraph (b) of this section, HUD employees, except special Government employees, shall not engage in:

(1) Employment with a business related to real estate or manufactured housing including, but not limited to, real estate brokerage, management and sales, architecture, engineering, mortgage lending, property insurance, appraisal services, title search services, construction, construction financing, land planning, or real estate development;

(2) The operation or management of investment properties to the extent that it rises to the level of a real estate-related business. HUD will determine whether an employee is operating or managing investment properties to an extent that it rises to the level of a real estate business

based on the totality of the circumstances, and will consider whether the employee maintains an office; advertises or otherwise solicits clients or business; hires staff or employees; uses business stationary or other similar materials; files the business as a corporation, limited liability company, partnership, or other type of business association with a state government; establishes a formal or informal association with an existing business; hires a management company; and the nature and number of its investment properties;

(3) Employment with a person or entity who registered as a lobbyist or lobbyist organization pursuant to 2 U.S.C 1603(a) and engages in lobbying activity concerning the Department;

(4) Employment as an officer or director with a Department-approved mortgagee, a lending institution, or an organization that services securities for the Department; or

(5) Employment with the Federal Home Loan Bank System or any affiliate thereof.

(b) Exceptions to employment prohibitions. The prohibitions set forth in paragraph (a) of this section do not apply to:

(1) Serving as an officer or a member of the Board of Directors of:

(i) A Federal Credit Union;

(ii) A cooperative, condominium association, or homeowners association for a housing project that is not subject to regulation by the Department or, if so regulated, in which the employee personally resides; or

(iii) An entity designated in writing by the Designated Agency Ethics Official.

(2) Holding a real estate agent's license; however, use of the license is limited as provided by paragraph (c) of this section.

(c) Prior approval requirement. (1) Employees, except special Government employees, shall obtain the prior written approval of an Agency Ethics Official before accepting compensated or uncompensated employment:

(i) As an officer, director, trustee, or general partner of, or in any other position of authority with a prohibited source, as defined at 5 CFR 2635.203(d);

(ii) With a state or local government;

(iii) In the same professional field as that of the employee's official position; or

(iv) As a real estate agent in relation to purchasing or selling a single family property for use as the employee's primary residence, or the primary residence of the employee's immediate family member.

(2) Approval shall be granted unless the conduct is inconsistent with 5 CFR part 2635 or this part.

(d) Liaison representative. An employee designated to serve in an official capacity as the Department's liaison representative to an outside organization is not engaged in an outside activity to which this section applies. Notwithstanding, an employee may be designated to serve as the Department's liaison representative only as authorized by law, and as approved by the Department under applicable procedures.

§ 7501.106 Bureau instructions and designation of separate agency component.

(a) Bureau instructions. With the concurrence of the Designated Agency Ethics Official, the Bureau Ethics Counselor is authorized, consistent with 5 CFR 2635.105(c), to designate Deputy Bureau Ethics Counselors, to make a determination, issue explanatory guidance, and establish procedures necessary to implement this part, subpart I of 5 CFR part 2634, and 5 CFR part 2635 for the Bureau.

(b) Designation of separate agency component. Pursuant to 5 CFR 2635.203(a), the Office of the Inspector General is designated as a separate agency for purposes of the regulations contained in subpart B of 5 CFR part 2635, governing gifts from outside sources; and 5 CFR 2635.807, governing teaching, speaking, or writing.

Date: July 18, 2012

Shaun Donovan,
Secretary

Don W. Fox
Acting Director
Office of Government Ethics

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